

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

CHARLENE CARTER,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	
TRANSPORT WORKERS UNION OF)	3:17-cv-02278-B
AMERICA LOCAL 556, <i>et al</i> ,)	
)	
Defendants.)	

**DEFENDANT SOUTHWEST AIRLINES CO.’S MOTION TO DISMISS PURSUANT TO
FRCP 12(b)(1) AND 12(b)(6)**

Defendant Southwest Airlines Co. (“Southwest”) brings this Motion to Dismiss Plaintiff Charlene Carter’s (“Plaintiff” or “Carter”) First Amended Complaint (“FAC”) pursuant Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) on the grounds set forth herein and as set forth in detail in Southwest’s supporting Brief.

GROUND FOR DISMISSAL

1. This Court lacks subject matter jurisdiction over Plaintiff’s claims against Southwest because they constitute post-certification minor disputes under the Railway Labor Act (“RLA”).

2. Plaintiff failed to allege sufficient facts to state a claim for breach of the duty of fair representation (Count III) against Defendant Transport Workers Union of America Local 556 and thus she cannot successfully bring a “hybrid” breach of contract claim under the RLA.

3. Plaintiff’s retaliation claims against Southwest (Counts I, II, and IV) fail because Carter has not alleged sufficient facts to state a cause of action. Specifically, Carter has not

adequately alleged a causal nexus between any protected activity and an adverse action by Southwest.

4. Plaintiff's claims against Southwest predicated on interference with alleged speech rights under the RLA (Counts I and II) fail because the nature of Carter's communications resulted in the loss of those alleged protections.

5. Plaintiff's claims against Southwest predicated on alleged violations of the First and Fifth Amendments to the United States Constitution (Count IV) fail because Carter has not adequately alleged that Southwest is a state actor, or that Carter has protected rights under said amendments vis-à-vis Southwest.

6. For the foregoing reasons, Southwest respectfully requests that this Court enter an order (i) dismissing Plaintiff's First Amended Complaint with prejudice; and (ii) for such other and further relief to which Southwest may be entitled.

Dated: October 24, 2017

Respectfully submitted,

By: /s/ Jonathan E. Clark
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**ATTORNEYS FOR DEFENDANT
SOUTHWEST AIRLINES CO.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon counsel for Plaintiff via the U.S. District Court, Northern District's CM/ECF system on October 24, 2017.

By: /s/ Jonathan E. Clark
Jonathan E. Clark